

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

*In Re: Platinum And Palladium Commodities
Litigation*

MASTER FILE
No. 10 Civ. 3617 (WHP)

This Document Relates To:

Platinum/Palladium Physical Action

**Physical Plaintiffs' Status Report Concerning Progress Of
Executing The Program Of Notice To The Physical Class**

Counsel for the Physical Class hereby provides the Court with a status report concerning the progress of the notice program pursuant to the July 15, 2014 Order Preliminarily Approving the Proposed Physical Class Settlement with the Moore Capital Defendants and Defendant Joseph Welsh. (ECF No. 213.) All components of the proposed program of notice approved by the Court on July 15, 2014 have been accomplished, along with additional notice outreach by Physical Class Counsel to putative Physical Class members.

A. Status of Court-approved program of notice

On July 15, 2014 the Court preliminary approved the proposed Physical Action Settlement and ordered the Settlement Administrator, A.B. Data, Ltd., to execute the Court-approved notice program to the Physical Class. (ECF No. 213.) The expansive notice program included notice publication of the Settlement for: (a) two consecutive months in *Futures* magazine; (b) two consecutive months in *Stocks & Commodities* magazine; (c) two consecutive months in *Futures & Options World* magazine; and (d) four consecutive Monday editions of *Investor's Business Daily*. *Id.* at 8. Notice of the Settlement was to be published on the following websites: (a) the *Stocks & Commodities* magazine website for one month; (b) the *Futures* magazine website for one month; (c) *Traders.com* for one month; (d) the *Investors Business Daily* website for one month; and (e) the *Kitco.com* website (the world's number one source of metals market information with over 1 million unique visitors

daily), for one month. *Id.* Notice was also to be published in the following periodicals: (a) *Barron's* magazine for two weeks; and (b) *The Wall Street Journal* for one day, in a shared notice program with Futures Class. *Id.* Finally, a settlement website was to be established, which is searchable on the internet and allows Physical Class members to obtain information about the proposed Settlement, including access to the Settlement Agreement, the Motion for Preliminary Approval, the Proof of Claim and answers to anticipated questions about class actions settlements. *Id.* at 9. The website created by the Settlement Administrator was to be located at www.PlatinumPalladiumPhysicalLitigation.com. *Id.*

The Court ordered the Settlement Administrator mail copies of the Class Notice to the following entities along with the request these entities forward the Class Notice to all persons who purchased or acquired an interest in Platinum and/or Palladium Bullion through their business during the Class Period: (a) MONEX Credit Company; (b) APMEX, Inc.; (c) Dillon Gage, Inc.; (d) Kitco Metals, Inc.; and (e) the United States Mint. *Id.* at 7.

The Court also ordered the Class Notice and Summary Notice to be distributed in the Futures Action shall include language advising futures class members of the proposed Physical Action settlement and include the web address for the Physical Action settlement website (www.PlatinumPalladiumPhysicalLitigation.com). *Id.* at 10. Similarly, the Court

directed the Class Notice and Summary Notice distributed in the Physical Action contain information regarding the Futures Action settlement. *Id.*

B. Status of Court-ordered notice components

To date, all Court-ordered notice provisions have been executed. Specifically, (a) one-half page notification was published in the September and October 2014 versions of *Futures* magazine; (b) one-half page notification was published in the September and October 2014 versions of *Stocks & Commodities* magazine; (c) one-half page notification was published, or will be published, in the August/September and October/November 2014 versions of *Futures & Options World* magazine; and (d) one-sixth page notification was published in the August 2014 4th, 11th, 18th and 25th Monday editions of *Investor's Business Daily*.

Notice of the Settlement was also published on the following websites in the form of banner advertisements: (a) from August 13, 2014 through September 11, 2014 on the *Stocks & Commodities* magazine website; (b) from August 13, 2014 through September 11, 2014 on the *Futures* magazine website; (c) from August 13, 2014 through September 11, 2014 on the *Futures & Options World* website; (d) from August 15, 2014 through September 13, 2014 on the *Investors Business Daily* website; and (e) from August 13, 2014 through September 13, 2014 on the *Kitco.com* website.

Physical Plaintiffs published notice in two of the most popular investment

periodicals, *Barron's* and *The Wall Street Journal*. A one-half page notification was published in the August 18 and August 25, 2014 weekly editions of *Barron's*. While the notice plan only called for a single publication of *The Wall Street Journal*, the Physical Plaintiffs were able to publish notice twice, in the form of a one-sixth page notice in the August 4 and August 18, 2014 editions of *The Wall Street Journal*.

The Settlement Administrator mailed copies of the Class Notice to the following entities with the request these entities forward the Class Notice to all persons who purchased or acquired an interest in Platinum and/or Palladium Bullion through their business during the Class Period: (a) Monex Credit Company ("Monex"); (b) APMEX, Inc. ("APMEX"); (c) Dillon Gage, Inc. ("Dillon Gage"); (d) Kitco Metals, Inc. ("Kitco"); and (e) United States Mint. To date, neither A.B. Data nor Physical Class Counsel have received any response from APMEX or Dillon Gage. The United States Mint referred our request to the United States Attorney General's office. Kitco agreed to send notice to all of its customers via email. On September 25, 2014 an email blast was sent to all persons who provided email contact information to *Kitco.com*. On September 30, 2014 Monex agreed to send direct notice via email and U.S. Mail to all customers who purchased Platinum and/or Palladium Bullion during the Class Period. The Settlement Administrator is in the process of refining the format of the email and letter. Physical Class Counsel

expect the emails and direct mailings to be executed within the next two weeks.

In addition to completing the previously-discussed Court-mandated notice requirements, notice of the Settlement was provided to putative class members in the following ways. On September 19, 2014 an email blast was sent to all persons who had provided email information to *Stock & Commodities* magazine and *Stock & Commodities* website, www.traders.com. On September 23, 2014 an email blast was sent to all persons who provided email information to *Futures* magazine or the *Futures Magazine* website, www.futuresmag.com.

On September 12, 2014, Physical Plaintiffs also issued a nationwide press release about the Settlement via PR Newswire. The press release mirrored the language of the Court-approved Class Notice and included a link to the settlement website. The press release was reprinted by a large number of internet sites, including CNBC, www.cnbc.com, The World News Network, www.wn.com, and Platinum E News, www.platinumenews.com.

Physical Plaintiffs implemented internet pay-per-click campaigns on internet search sites Google and Bing. The Google Adwords campaign began on September 5, 2014 and will run through October 5, 2014. The Bing search campaign began on September 8, 2014 and will run through October 8, 2014. Both campaigns target investment purchasers of platinum and palladium bullion. Physical Plaintiffs also purchased advertisements on Facebook.com.

Direct mail notice was provided to thirty-two large investment institutions, notifying the entities of the proposed Settlement. These are entities who have been identified as either having purchased, or who likely purchased, Platinum or Palladium bullion during the Class Period. Each letter included a copy of the long form notice, the link to the settlement website and a request this notice be forwarded to any clients who may have purchased Platinum or Palladium Bullion. The Class Notice and request was sent to the following investment banks/entities: (1) American International Group, Inc. (AIG); (2) Ally Financial, Inc.; (3) Bancwest Corp.; (4) Bank of America Corp.; (5) Barclays Delaware Holdings, LLC; (6) BB&T Corp.; (7) BBVA Compass Bancshares, Inc.; (8) Bank of New York Mellon Corp.; (9) Capital One Financial Corp.; (10) Citigroup, Inc.; (11) Credit Suisse; (12) Deutsche Bank Trust Corp.; (13) Fifth Third Bancorp.; (14) Goldman Sachs Group, Inc.; (15) HSBC Bank USA, N.A., (16) Huntington Bancshares, Inc.; (17) JP Morgan Chase Bank, N.A., (18) M&T Bank Corp.; (19) Morgan Stanley & Co., LLC; (20) Unionbancal Corp. a/k/a MUFG American Holdings Corp.; (21) PNC Financial Services Group, Inc.; (22) RBC Capital Markets; (23) Royal Bank of Canada (RBC); (24) RBS Citizens Financial Group, Inc.; (25) Regions Financial Corp.; (26) Suntrust Banks, Inc.; (27) Synovus Financial Corp.; (28) TD Bank US Holding Co.; (29) UBS; (30) U.S. Bancorp.; and (31) Wells Fargo & Co. The aforementioned letters were sent via U.S. Mail,

postage prepaid, on September 4, 2014, and follow-up will be conducted by Physical Class Counsel and the settlement administrator.

Copies of the Class Notice also were mailed to additional retailers of Platinum and Palladium Bullion with the request these entities forward the Class Notice to all persons who purchased or acquired an interest in Platinum and/or Palladium Bullion during the Class Period. These entities are Provident Metals of Dallas, Texas, JM Bullion of Dallas, Texas, Bullion Direct of Austin, Texas and CMI Gold & Silver, Inc. of Phoenix, AZ. The aforementioned letters were sent via U.S. Mail, postage prepaid, on September 30, 2014.

As noted above, the Settlement Administrator sent notice of the Settlement to Monex, APMEX and Dillon Gage, along with a request these entities forward Class Notice of the Settlement to any customers who purchased or otherwise acquired an interest in Platinum or Palladium Bullion during the Class Period. To date, however, neither APMEX nor Dillon Gage have responded to this request. After receiving no response from Monex, which upon information and belief, is the largest retailer of Platinum and Palladium Bullion in the United States, Physical Class Counsel served a Rule 45 subpoena on Monex seeking contact information for Platinum or Palladium Bullion purchasers during the Class Period. On September 30, 2014 Monex informed Physical Class Counsel they would provide notice to all potentially affected Class Members via both email and direct mailing.

The Settlement Administrator and Monex are in the process of refining the email and direct mailing to be sent to all Monex customers who are potentially affected Class Members, and expect notice to be completed within the next two weeks.

The Court-mandated notice components have been fully executed, along with additional follow-up efforts to ensure as many putative class members are notified of the settlement. Physical Plaintiffs believe the notice program has been robust, extensive, and has been the best notice practicable under the circumstances.

C. Continuance of settlement-related dates

It is Physical Class Counsel's understanding Futures Class Counsel seeks a ninety-day continuance of all settlement-related deadlines, and seeks a February 5, 2015 date for a hearing on final approval of the settlement. Physical Class Counsel are amenable to the continuance, believe the continuance will assist direct notice dissemination to the Physical Class, and are amenable to the February 5, 2015 hearing date, or any other date the Court chooses for its convenience, with one exception. Certain Physical Class Counsel will be outside the United States from **January 12 to January 24, 2015**, and respectfully request the Court not set any hearings during this period. Physical Class Counsel shall make themselves available for any other dates selected or agreed to by the parties and ordered by the Court in 2014 or 2015.

Dated: San Diego, California

October 1, 2014

Respectfully submitted,

/s/ John A. Lowther

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